

REMARKS

The present amendment responds to the Office Action mailed September 8, 2005 (“Office Action”) and is timely filed by December 8, 2005. Claims 1 – 5, 7 – 24, and 26 – 38 are pending and stand rejected. The present amendment cancels claims 2, 12 – 13, 29 and 32 – 33 and amends claims 1, 2, 7, 10, 20, 22, 26 and 30; upon entry of the amendment claims 1, 3 – 5, 7 – 11, 14 – 24, 26 – 28, 30, 31, and 34 – 38 will be pending. Applicants respectfully request entry of the amendments and reconsideration in light of the amendments and following remarks.

Claims 3, 7 and 30 are amended to correct the dependency of the claims. Claim 20 is amended to provide a proper antecedent basis and to conform the sentence structure to corresponding method claim 37. Claims 22 and 26 are amended to correct typographical errors.

Claim 1 is amended to add a monitoring liquid reservoir in liquid communication with the annular space and to incorporate the subject matter of claim 2. Support for a monitoring liquid reservoir in liquid communication with the annular space is found throughout the specification, *e.g.*, page 3, line 10 and page 11, line 21 through page 12, line 9. Claim 10 is amended to reflect the amendment in Claim 1. Claim 22 is amended to provide a monitoring liquid reservoir in liquid communication with the annular space, where the reservoir is positioned near the top and is accessible from a space adjacent to the top. Support for this amendment is found at least in the subject matter of claim 2 and at the aforementioned portion of the specification. Accordingly, the amendments do not introduce new matter.

Any cancellation of subject matter is made without prejudice to applicants’ right to pursue such subject matter in a subsequently continuing application. Applicants’ silence with respect to any comment in the Office Action not specifically addressed below should not be construed as applicants’ agreement with the Examiner’s reasoning or interpretation of the claimed subject matter, the teachings of the cited art, or governing case law.

Rejection of the claims under 35 U.S.C. § 103(a):

All the pending claims presently are rejected under 35 U.S.C. § 103 over the combination of U.S. Patent No. 6,729,797 B2 (“Manger”) in view of U.S. Patent No. 5,544,974 (“Berg”) and U.S. Patent No. 6,886,388 B1 (“McGill”). Applicants traverse the rejection, noting as an initial

matter that it is moot with regard to claims 2, 12 – 13, 29 and 32 – 33, which are presently canceled.

Manger does not teach or suggest the presently claimed invention, particularly a monitoring *liquid* reservoir in *liquid* communication with the annular space. A proper case of *prima facie* obviousness requires that “there be some suggestion, motivation, or teaching in the prior art” that would have suggested the claimed invention to one of ordinary skill in the art. *See C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 48 U.S.P.Q.2d 1225 (Fed. Cir. 1998). Referring to element **30** of Manger, the Examiner alleges that Manger teaches, among other things, an underground storage system comprising a monitoring fluid reservoir, where the annular space comprises a thin film that allows “liquid” to flow through the annular space created by an inner and outer wall (Office Action at 4); however, Manger defines element **30** as “fluid permeable material” (Manger at Col. 5, line 15) that allows “for fluid distribution throughout the interstitial [*i.e.*, annular] space to facilitate testing” (*Id.* at Col. 5, lines 29 – 31). Manger here refers to the use of a “fluid”—not a liquid—within the annular space to facilitate testing.

Manger nowhere teaches or suggests using a liquid to facilitate testing for leaks. Manger’s entire discussion of the “pressure testable flexible boot” is in the context of a test port that provides a pathway for introducing air to pressurize and monitor a sealed area. (*See, e.g.*, Manger at Col. 2, lines 3 – 6.) In fact, Manger teaches away from the use of liquid, where he incorporates U.S. Patent No. 5,345,813 (“Flessas”) by reference in its entirety (Manger at Col. 6, lines 58 – 59). Flessas says that “prior art devices [*i.e.*, those not possessing the improvements to the containment system offered by the presently claimed invention] . . . could not be tested without filling the containment system with water.” With respect to such prior art devices, Flessas states that pressure testing for leaks is advantageous to water testing:

[v]erifying the integrity of the piping penetrations is crucial to providing a reliable system, and therefore the ability to provide pressure testable piping penetrations is a significant advantage. . . .

(Flessas at Col. 1, lines 52 – 56; emphasis added.) That is, Flessas suggests using air pressure to facilitate detection of leaks in pipe penetrations into an underground storage device, specifically as an alternative to prior art devices that used a liquid, such as water. Further, Berg does not suggest using a liquid to facilitate leak detection, nor does the Examiner rely on Berg for such a suggestion. (*Cf.* Office Action at 5.) Accordingly, the artisan of ordinary skill at the time of the invention, “who is normally guided by the then-accepted wisdom in the art,” would have seen an air pressurized leak detector as an advantage to a leak detector using liquid and thus would not have arrived at the presently claimed invention. *See W.L. Gore & Assocs. V. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

The Examiner combines the teachings of Manger and Berg with those of McGill, but not to allege specifically the obviousness of an underground storage system comprising a monitoring liquid reservoir in liquid communication with the annular space, as presently claimed. (*See* Office Action at 6 – 8.) Because the Examiner has not provided a reason why the combination of Manger, Berg and McGill would have suggested this aspect of the presently claimed invention, the rejection should be withdrawn; however, to expedite prosecution, applicants address the combination of references with respect to an underground storage system additionally comprising a monitoring liquid reservoir, where the reservoir is positioned near the top of the underground storage system and is accessible from a space adjacent to the top, as presently claimed.

McGill does not teach or suggest a monitoring liquid reservoir, where the reservoir is positioned near the top and accessible from a space adjacent the top. McGill instead detects changes in a monitoring liquid level with a high point level sensor 78 located in a dispenser containment sump 18 that is positioned above ground level (McGill at Figure1). McGill does not teach or suggest the advantages achieved by positioning a monitoring liquid reservoir near the top of the underground storage system, where the reservoir is accessible from a space adjacent the top, as presently claimed. For one, the presently claimed monitoring liquid reservoir is easily accessible (Specification at page 3, lines 14 – 15) but less vulnerable to damage because it is underground. For another, the presently claimed reservoir may be positioned so that it is roughly

half filled by with liquid from the interstitial space, facilitating detection of movement of liquid in or out of the reservoir. (*See, e.g.*, Specification at page 13, lines 4 – 12.)

Because the combined references do not teach or suggest the presently claimed invention of claims 1 and 22, particularly an underground storage system comprising a monitoring liquid reservoir in liquid communication with the annular space, where the reservoir is positioned near the top and is accessible from a space adjacent said top, the rejection is improper and should be withdrawn with respect to these claims. Because the dependent claims further limit the independent claims, the rejection of the dependent claims likewise is improper and should be withdrawn, as well.

CONCLUSION

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

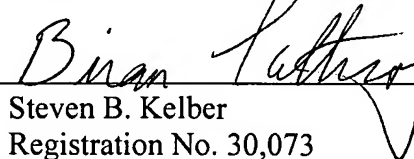
December 8, 2005

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Respectfully submitted,

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